IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9202 OF 2004

Mukhtar Varisali Shaikh. .. Petitioner.

Vs.

Varisali Valimohammad Shaikh & Ors. .. Respondents

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Shri Ashok B.Tajane for the petitioner.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 29th NOVEMBER, 2004.

P.C.

1. Heard the learned advocate for the petitioner.

2. The petitioner challenges the order dated 17th September, 2004 passed by the lower appellate Court rejecting the application filed by the petitioner for appointment of Court Commissioner. It is the case of the petitioner that the petitioner is the tenant of the respondent No.1 in respect of the suit property and has been carrying on business of motor repairing in the name and style "National Motor Garage". It is his further case that he had installed various machines in the suit premises and in order to

establish all these facts, he wanted the Court to appoint Court Commissioner. The lower appellate Court has rejected the application primararily on the ground that no such appointment of Court Commissioner can be allowed to be made in order to establish the case of the petitioner. Secondly that the petitioner had earlier filed the application before the trial Court and the same has been rejected by the trial Court. Apart from the claim that the petitioner wanted to establish the facts which he has averred in support of his case in the matter, no other ground has been disclosed for appointment of Court Commissioner. It is well settled that the Commissioner cannot be appointed for collecting the evidence and establishing the case of a party. Considering the same, no fault can be found in the impugned order, and no irregularity having been disclosed in the impugned order, the same does not warrant any interference in writ jurisdiction under Article 227 of the Constitution of India. Besides, similar application having been dismissed by the trial Court and the same having not been challenged, it is a clear case of abuse of process of law by the petitioner, and therefore, on that count also no fault can be found with the impugned order.

3. The petition is, therefore, rejected with costs of Rs.1,000/-.